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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

_____

Ex parte MICHAEL FREED, ELANGO GANNESEN,
and PRAVEEN PATNALA

_____

Appeal 2009-006451
Application 09/900,515
Technology Center 2400

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Before JOHN A. JEFFERY, JEAN R. HOMERE, and STEPHEN C. SIU,
Administrative Patent Judges.

JEFFERY, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's

rejection of claims 1-8, 11-35, and 37-53. Claims 9, 10, and 35 have been

canceled. App. Br. 27, 32. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

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[1] The two-month time period for filing an appeal or commencing a civil
action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing,
as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE"
(paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery
mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants invented a method and device for improving the performance of secure communications between network devices. *See generally* Spec. 1. Claim 1 is illustrative:

> 1.   A method for secure communications between a client and a server, comprising:
> managing a communications negotiation between the client and the server through an intermediate device that supports a direct mode and a proxy mode;
> receiving encrypted data packets from the client with the intermediate device;
> decrypting each encrypted data packet with the intermediate device;
> forwarding unencrypted data packets from the intermediate device to the server using a communication session negotiated by the client and the server when the intermediate device operates in direct mode;
> forwarding unencrypted data packets from the intermediate device to the server using a communication session negotiated by the server and the intermediate device when the intermediate device operates in proxy mode;
> receiving data packets from the server;
> encrypting the data packets from the server; and
> forwarding encrypted data packets to the client.

The Examiner relies on the following as evidence of unpatentability:

Holtey	US 5,293,424	Mar. 8, 1994
Boeuf	US 6,009,502	Dec. 28. 1999
Fujiyama	US 6,052,728	Apr. 18, 2000
Weinstein	US 6,094,485	July 25, 2000
Maloney	US 6,253,337 B1	June 26, 2001
Cohen	US 6,389,462 B1	Mar. 14, 2002 (filed Dec. 16, 1998)

Gelman	US 6,415,329 B1	July 2, 2002 (filed Oct. 30, 1998)
Bellaton	US 6,473,425 B1	Oct. 29, 2002 (filed Oct. 2, 1997)
Ellis	US 6,484,257 B1	Nov. 19, 2002 (filed Feb. 27, 1999)
Harper	US 6,820,215 B2	Nov. 16, 2004 (filed Dec. 28, 2000)

<div align="center">THE REJECTIONS</div>

1. The Examiner rejected claims 1-8, 11, 45-47, 51, and 53 under 35 U.S.C. § 102(e) as anticipated by Ellis. Ans. 4-7.[2]

2. The Examiner rejected claims 12, 14, and 48 under 35 U.S.C. § 103(a) as unpatentable over Ellis and Fujiyama. Ans. 8.

3. The Examiner rejected claims 13 and 15 under 35 U.S.C. § 103(a) as unpatentable over Ellis, Fujiyama, and Bellaton. Ans. 8-9.

4. The Examiner rejected claims 16, 17, and 19 under 35 U.S.C. § 103(a) as unpatentable over Ellis and Gelman. Ans. 9-11.

5. The Examiner rejected claim 18 under 35 U.S.C. § 103(a) as unpatentable over Ellis, Gelman, and Holtey. Ans. 11.

6. The Examiner rejected claims 20-22, 27, 29, 33-35, 38, 39, 41, and 52 under 35 U.S.C. § 103(a) as unpatentable over Ellis and Maloney. Ans. 11-14, 19-21.

7. The Examiner rejected claims 23-25 under 35 U.S.C. § 103(a) as unpatentable over Ellis, Maloney, and Cohen. Ans. 15-16.

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[2] Throughout this opinion, we refer to (1) the Appeal Brief filed February 7, 2007; (2) the Examiner's Answer mailed May 29, 2008; and (3) the Reply Brief filed July 29, 2008.

8. The Examiner rejected claims 26, 28, and 40 under 35 U.S.C. § 103(a) as unpatentable over Ellis, Maloney, and Bellaton. Ans. 16-17, 22-23.

9. The Examiner rejected claims 30 and 42 under 35 U.S.C. § 103(a) as unpatentable over Ellis, Maloney, and Holtey. Ans. 17, 23-24.

10. The Examiner rejected claims 31 and 43 under 35 U.S.C. § 103(a) as unpatentable over Ellis, Maloney, and Boeuf. Ans. 17-18, 24.

11. The Examiner rejected claims 32 and 44 under 35 U.S.C. § 103(a) as unpatentable over Ellis, Maloney, and Weinstein. Ans. 18-19, 25.

12. The Examiner rejected claim 37 under 35 U.S.C. § 103(a) as unpatentable over Ellis, Maloney, and Harper. Ans. 21-22.

13. The Examiner rejected claim 49 under 35 U.S.C. § 103(a) as unpatentable over Ellis and Holtey. Ans. 25-26.

14. The Examiner rejected claim 50 under 35 U.S.C. § 103(a) as unpatentable over Ellis and Harper. Ans. 26-27.

THE ANTICIPATION REJECTION OVER ELLIS

Regarding independent claim 1, the Examiner finds that Ellis discloses all recited limitations, including forwarding unencrypted data packets from the intermediate device (i.e., an agent server) to the server in both the direct and proxy mode by redirecting communications to the intended final destination, which includes a client or main server. Ans. 4-5, 27-29. Appellants argue, among other things, that the disclosed final destination in Ellis is not the main server, and therefore Ellis does not forward data packets from an intermediate device (i.e., the agent server) to a server as recited in claim 1. *See* App. Br. 18-20; Reply Br. 5-8.

The issue before us, then, is as follows:

ISSUE

Under § 102, has the Examiner erred in rejecting claim 1 by finding that Ellis discloses forwarding unencrypted data packets from the intermediate device to the server using a session negotiated by: (a) the client and server in direct mode, and (b) the server and intermediate device in proxy mode?

FINDINGS OF FACT

1.   Ellis discloses a client, agent, and main server system that operates transparently within a network. The system includes clients or hosts (e.g., 210, 215, 225, 230), main server 220, and agents (shown to the right of Destination Client1 230). Ellis, col. 6, ll. 2-5; col. 14, ll. 55-60; Fig. 2.

2.   As part of Ellis' start up procedure, the Agent Server(s) register and authenticate with the Main Server at step 405, while the Client(s) connect to the Main Server and authenticate at 420. Ellis, col. 7, ll. 17-25 Fig. 4.

3.   In determining whether to accept a new session, Ellis explains that the Main Server decides whether the Main Server has the available processor resources to handle the load. If not, the Main Server then determines if an Agent Server has the resources to service the session. If the Agent Server can handle the session, the Main Server will transfer the session to the Agent Server. Then, the Agent Server decrypts the

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communication and redirects the communication to the intended final destination. Ellis, col. 7, ll. 25-47, 57-59; col. 7, l. 66 – col. 8, l. 3.

    4.   Ellis describes the final destination (e.g., 5B40) as a client or host. Ellis, col. 8, l. 54-col. 9, l. 28; Figs. 5A-B.

    5.   Ellis' invention uses client server and agent technology. Ellis, col. 6, ll. 9-12

ANALYSIS

Based on the record before us, we find error in the Examiner's anticipation rejection of claim 1 which calls for, in pertinent part, forwarding unencrypted data packets from the intermediate device to the server using a session negotiated by: (1) client and server in direct mode and (2) client and intermediate server in proxy mode. Ellis' system has clients (e.g., 210, 215, 225, 230), a main server 220, and agents (shown to the right of Destination Client1 230). FF 1. As part of the start up procedure, the agents or agent servers register and authenticate with the main server, and the clients connect to a main server and authenticate. FF 2. Ellis thus negotiates communication sessions between both (1) the client and main server, and (2) the agent server and the main server. Furthermore, the Examiner maps Ellis' agents to the claimed intermediate device. *See* Ans. 28. Ellis therefore discloses negotiated communication sessions between both (1) the client and a server and (2) the intermediate device and a server as recited in claim 1.

Before receiving data packets from the client (e.g., accept a new session), Ellis explains that the main server determines whether the main server has the available processor resources to handle the load. *See* FF 3. If not, the main server will determine if an agent server has sufficient resources

to service the session. *See id*. If the agent server can handle the session, the main server will transfer the data packets to the agent server. *See id*. Then, the agent server decrypts the communication and redirects the communication to the intended final destination. *Id*. In this later scenario, the Examiner indicates that the final destination includes the main server, such that the intermediate device (e.g., the agent server) forwards the communication to the server as required by claim 1. *See* Ans. 28. We disagree.

Ellis discloses the destination as clients or hosts (e.g., 225 or 230)—not main server 220. *See* FF 1, 4. Ellis thus fails to state explicitly that the final destination includes the main server. Notably, Ellis discloses a client server on one occasion (FF 5), and Appellants admit as much (*see* Reply Br. 5). But this discussion still does not address the main server as the final destination. We therefore find that interpreting Ellis' final destination as a main server is not supported by Ellis.

Moreover, while Ellis states the client can be a client server (*see* FF 5), the main server—not the client server—negotiates the communication sessions in the direct and proxy modes. Thus, in this scenario, the forwarding of the data packets from an intermediate device (e.g., the main server) to a server (e.g., a client server) would not occur using a communication session negotiated by the client and server, as required by claim 1. Ellis therefore does not disclose forwarding unencrypted data packets from the intermediate device to the server using a communication session negotiated by: (1) the client and the server or (2) the server and the intermediate device as claimed. Additionally, in this mode, the intermediate device (e.g., main server) would differ from the intermediate device (e.g.,

agent server) in the proxy mode, and therefore fails to disclose forwarding the unencrypted data packets from the same intermediate device to the server as required by claim 1.

We are therefore persuaded that the Examiner erred in rejecting (1) independent claim 1; (2) independent claim 45[3] which recites commensurate limitations; and (3) dependent claims 2-8, 11, 46, 47, 51, and 53 for similar reasons. Since this issue is dispositive of our reversal of the Examiner's rejection, we need not address Appellants' other arguments (App. Br. 18-22; Reply Br. 4-10).

THE OBVIOUSNESS REJECTIONS

Regarding claims 12-35, 37-45, 48-50, and 52, the Examiner has rejected these claims using Ellis in combination with at least one other reference. *See* Ans. 8-27. Appellants present numerous arguments addressing different dependent claims rejected under § 103. *See* App. Br. 23-25; Reply Br. 10.

Each obviousness rejection relies on Ellis to disclose forwarding unencrypted data packets from the intermediate device to the server using a session negotiated by: (1) a client and server in direct mode and (2) the intermediate device and server in proxy mode as recited in independent claims 1 and 45. Similarly, the Examiner relies on Ellis to teach commensurate limitations of forwarding decrypted application data from the intermediary device to a server using a negotiated session between the client

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[3] Claim 45 recites "a server" in the second clause of the claim, but later recites "the servers." We deem this inconsistency a harmless typographical error.

and the server as recited in independent claim 20 or the acceleration apparatus adapted to forward the decrypted data packets to a server using a session negotiated by: (1) client and server in direct mode and (2) acceleration device and server in proxy mode as recited in independent claim 33. *See* Ans. 11-12, 19-20. As explained above, we are persuaded by Appellants' argument that Ellis fails to teach this feature of forwarding unencrypted data packets from the intermediate, intermediary, or acceleration device to the server using a session negotiated by: (1) the client and the server, or (2) the intermediate, intermediary, or acceleration and the server as recited.

The Examiner has not shown that the additional cited prior art references cure this deficiency. For the above reasons, Appellants have shown the Examiner erred in rejecting claims 12-35, 37-45, 48-50, and 52 under 35 U.S.C. § 103.

CONCLUSION

The Examiner erred in rejecting (1) claims 1-8, 11, 45-47, 51, and 53 under § 102, and (2) claims 12-35, 37-50, and 52 under § 103.

ORDER

The Examiner's decision rejecting claims 1-8, 11-35, and 37-53 is reversed.

REVERSED

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